

1. 40 CFR 122.23(h) and 35 Ill. Adm. Code 502.310 require that CAFO owners or operators seeking authorization to discharge under a general permit must submit a notice of intent. The draft general permit includes several requires found in special conditions 1 and 15 related to permit applications, however, it is not clear if (1) new, first-time permit applicants need to submit an NOI; and (2) if existing permitted CAFOs need to submit updated Forms 1 and 2B with their NOI.

- (1) The first sentence in the general permit under “Initial Authorizations under the General Permit” of Special Condition 1 has been changed to state that owners and operators who do not have a permit but are required to have a permit shall complete and submit Forms 1 and 2B and a Notice of Intent (NOI). This change was made in order to clarify that first-time permit applicants need to submit an NOI pursuant to 35 IAC 502.310(a).*
- (2) The sentence in the general permit under “Existing Permitted Discharges and Renewal under this General Permit or Renewal of the General Permit” of Special Condition 1 was changed to state that owners or operators who possess permits for livestock management facilities or livestock waste handling facilities must submit a completed NOI and Forms 1 & 2B. This change was made in order to clarify that existing permitted CAFOs need to submit Forms 1 and 2B with their NOI.*

2. Special Condition 1, Notice of Intent, a: The list of minimum information to include with the NOI should include the latitude and longitude at the entrance to the production area.

The “latitude and longitude at the entrance to the production area” was added to the list of items that shall be provided with the NOI in the general permit under Contents of Notice of Intent (a) of Special Condition 1 pursuant to 35 IAC 502.201(a)(3).

3. Special Condition 1, Notice of Intent, e: In addition to the items listed in e.i. through e.vi., an existing permitted CAFO seeking to renew its permit authorization should provide updated information on the (1) total capacity of livestock waste containment and storage and (2) type of animals and whether animals are housed in open confinement or under roof.

- (1) Any changes to the type and capacity of livestock waste containment and storage was added to the list of items that shall be provided with the NOI in the general permit under Contents of Notice of Intent (e) (iii) of Special Condition 1 pursuant to 35 IAC 502.201(a)(6).*
- (2) Any changes to the type of animals and whether they are housed in open confinement or under roof was added to the list of items that shall be provided with the NOI in the general permit under Contents of Notice of Intent (e) (vii) of Special Condition 1 pursuant to 35 IAC 502.201(a)(4).*

4. Special Condition 1.e.ii.: Please define “livestock operation” and clarify what information the State is seeking when it asks for “size of the livestock operation”.

“Livestock operation” has been changed to “livestock management facility”. “Size of the livestock operation” was changed to “size of the production area of the livestock management facility” in order to further clarify what is meant by “size of the livestock operation”.

5. Special Condition 3.a.: This condition provides that an overflow is allowed under this permit only when specific permit conditions that are listed are met. To be consistent with the federal rules in 40 CFR Part 412, special conditions 8.p. and 8.u. should be added to the list of specific permit conditions currently identified in 3.a.

Special Conditions 8 (p) and 8 (v), record keeping requirements, have been added to the list of specific permit conditions identified in Special Condition 3(a) in order to be consistent with the federal rules in 40 CFR Part 412.

6. Special Condition 3.c.: “Livestock waste application areas” is a term not defined in special condition 17 or in 35 Ill. Adm. Code Part 501. EPA recommends defining this term in special condition 17 or consider changing “livestock waste application areas” to “land application areas” in special condition 3.c.

“Livestock waste application areas” in Special Condition 3 (c) has been changed to “Land application area” in order to be consistent with 35 IAC 501.267.

7. Special Condition 3.h.: What condition in the permit provides that the State has the opportunity to review and approve the cover and pad or other control designs for temporary manure stacks?

Special Condition 1 (e) (iii) has been modified to state “The type and capacity of livestock waste containment and storage, including temporary manure stacks and the associated cover, pad or other control methods;”

8. Special Condition 3.k.: As discussed in #5 above, Special Conditions 8.p. and 8.u. should be added to the list a specific permit conditions currently identified in 3.k.

Special Condition 8 (p) and 8 (v) have been added to Special Condition 3 (k).

9. Special Condition 3.p.: It is not clear why the permittee is allowed up to 18 months to modify plans required by the permit to implement a wasteload allocation in an approved TMDL. Any authorization to discharge under the General Permit for CAFOs should be issued consistent with applicable allocations included in an approved TMDL. Please provide further information on how the State plans to incorporate approved WLAs into authorizations to discharge under the General Permit for CAFOs. Typically, Illinois EPA TMDLs include a wasteload allocation of zero for CAFOs. The TMDLs do not typically discuss the “flow regime” considered when establishing the wasteload allocation for CAFOs.

The 18 months to modify plans and to implement a wasteload allocation in an approved TMDL is consistent with other general NPDES permits issued by the Agency. If revisions to the plans are needed this will allow time for CAFOs to revise the current plans, prepare application for an individual NPDES permit, build new livestock waste storage structures, or acquire more land application area. Special Condition 3 (p) (iii) has been removed from the General Permit as TMDLs do not have limits linked to a “flow regime” for CAFOs.

The approved WLA of zero is incorporated into authorizations to discharge from the production area under the General Permit. The nutrient management plan and General Permit prohibits a CAFO from discharging except under federally allowed exceptions for overflows from storage facilities properly designed, constructed, operated and maintained to control the runoff and precipitation from a 25 year, 24 hour storm event and that meets additional measures.

10. Special Condition 3.p.vi.: What are the criteria for the monitoring program that will be implemented to determine whether the nutrient management plan, CAFO discharge and storm water controls are adequate to meet the WLA in an approved TMDL? The specifics of this monitoring plan should be included in the permit issued to the CAFO.

CAFOs are different from other point sources in that they do not have a frequent or continuous permitted discharge. The WLA of zero is incorporated into the permit eliminating a discharge to monitor. As specified by Special Condition 7, CAFOs are required to weekly monitor and record liquid levels at livestock waste storage structures; weekly inspect the integrity of the livestock waste storage structures, stormwater and runoff diversion structures, and devices channeling contaminated stormwater and uncontaminated stormwater; daily inspect and maintain water supply lines; visually inspect subsurface drainage systems before, during and after land application; sample and analyze manure and soil at a specified frequency, and base the manure land application rates on the testing results; daily inspect land application equipment for leaks and calibrate the equipment on a routine basis. In addition, Special Condition 3(l) requires that that any allowed overflow or discharge shall not cause a water quality violation. Results of inspection and monitoring are required to be recorded and kept pursuant Special Condition 8. Based on the above monitoring, additional monitoring is not warranted for CAFOs in the permit that have a zero WLA in an approved TMDL. However, if alternative WLAs or Watershed Management Plans apply 3 (p) (iv) and (v) have been modified in the draft General Permit to require monitoring as required. If monitoring were to be added, the NMP would be required to contain the monitoring requirement.

11. Special Condition 3.q.xvii. and 3.q.xx.: Special condition 3.q.xvii. requires livestock waste to be incorporated on the day of application while 3.q.xx. does not provide a time period in which livestock waste must be incorporated. Other permit conditions require incorporation within 24 hours. What is the justification for the different time periods provided for incorporation? EPA recommends that special condition 3.q.xx. include a time period for incorporation.

Special Conditions 3 (q) (xvii) and 3 (q) (xx) have been modified to state that injection or incorporation within 24 hours is required.

12. Special Condition 3.q.xxiii.A.(i).3. and 3.q.xxiii.A.(ii).: Special condition 3.q.xxiii.A.(ii). requires that the storage volume calculation in 3.q.xxiii.A.(i).3. include specific factors, however, 3.q.xxiii.A.(i).3. does not include a requirement to calculate the storage volume it only requires that the permittee take steps to provide 120 days of storage sometime prior to December 1. Language should be added to make it clear that the permittee must calculate the storage volume and maintain a record of the calculation.

The sentence “The permittee must perform a calculation of the storage volume provided to verify if it meets the volume required by item q.xxiii.A(i).3.” has been added at the beginning of Special Condition 3 (q) (xxiii) (A) (ii). Recordkeeping of the calculation is required by Special Condition 8 (u), which was added to the general permit in response to Comment 14.

13. Special Condition 3.q.xxiii.A.(i).5.: What actions can the State take upon receiving notification that a CAFO has less than 120 days of storage available on December 1?

The Illinois EPA may inspect or contact the facility to inquire about their winter application plan and may or may not take compliance or enforcement action regarding the conditions found at the facility.

14. Special Condition 3.q.xxiii.B.vi.: Permittees must visually monitor for runoff if the CAFO surface land applies livestock waste on ice covered or snow covered land. Special Condition 8 of the permit should require that the visual monitoring be recorded and the records maintained in accordance with special condition 8.u.

Special Condition 8 (u) has been added to the general permit which states that the permittee shall maintain records of the visual monitoring required in Special Condition 3 (q) (xxiii) (B) (vi) for the land application of livestock waste on ice covered or snow covered land. Special Condition 8 (u) was added because the permittee must keep a copy of all applicable records identified pursuant to 35 IAC 502.510(b)(16) pursuant to 35 IAC 502.320(a). 35 IAC 502.510(b)(16) states that specific records will be maintained to document the implementation and management of the elements described in the previous subsections. These subsections include a winter time application plan that meets the requirements of Section 502.630 pursuant to 35 IAC 502.510(b)(12). 35 IAC 502.630(b)(6) requires visual monitoring of the surface land application of livestock waste on ice covered or snow covered land.

15. Special Condition 7.b.: Livestock waste handling facilities are required to contain the precipitation and associated runoff from the 25-year 24-hour precipitation event. The word “and/or” used in this special condition should be changed to “and”.

The phrase “and/or” used in Special Condition 7 (b) was changed to “and” in order to be consistent with 35 IAC 502.610(d).

16. Special Condition 7.k.: Although the federal rules do not define a specific time period for inspections of equipment used for land application of livestock waste, EPA encourages the states to define a time period appropriate within their state.

Special Condition 7 (k) was modified to say that the CAFO permittee must inspect equipment used for land application of livestock waste for leaks and problems on a daily basis for each day during which livestock wastes are applied to land. Neither the state or federal rules define a specific time period for inspection of equipment used for land application of livestock waste, so the time period of a “daily basis” was chosen in order to be consistent with Special Condition 8 (b) (vi) pursuant to 35 IAC 502.320(w)(6). Special Condition 8 (b) (vi) requires daily recordkeeping

of the leak inspection of livestock waste application equipment for each day during which livestock wastes are applied to land.

17. Special Conditions 8.b.iii. and 8.b.vii.: Please clarify why both of these conditions are necessary. Special condition 8.b.vii. is a more comprehensive requirement.

The regulations applicable to these conditions can be found in 35 IAC under Sections 502.320 (w) (3) and 502.320 (w) (8). Special Condition 8 (b) (iii) differs from Special Condition 8 (b) (vii) in that Special Condition 8 (b) (iii) is an estimate of the amount of precipitation whereas Special Condition 8 (b) (vii) is recording what type of weather conditions are present before, after and during land application.

18. Special Condition 8.i.: The reference to special condition 4.e.xi. may be in error. Additionally, what permit condition requires the CAFO to determine expected crop yields?

The reference to Special Condition 4 (e) (xi) in Special Condition 8 (i) was an error and has been corrected to reference Special Condition 4 (e) (x). Special Condition 8 (i) has been changed to state that the permittee shall keep records of the realistic crop yield goals for the land application areas. Special Condition 4 (e) (x) has been changed to include realistic crop yield goals for each crop or use in each field. These changes are made in order to clarify that the applicant shall include the realistic crop yield goal in the Nutrient Management Plan and shall keep records accordingly. The IEPA decided to use the term “realistic crop yield goal” instead of “expected crop yield” or “realistic yield goal” based on the description of realistic crop yield goal given in 35 IAC 502.625(e) and the use of realistic crop yield goal in the 35 Ill. Adm. Code Subtitle E state regulations.

19. Special Condition 9.a.ix.H.: The requirements for when to submit an updated nutrient management plan in the first and second sentence should be clarified. Any changes to the nutrient management plan, except for calculations made in accordance with the linear and narrative approach calculations set forth at 40 CFR 122.42(e)(5)(i)(B) and 122.42(e)(5)(ii)(D), respectively, need to be submitted to the State. The second sentence as currently written can be interpreted that only substantial changes to the nutrient management plan need to be submitted to the State for approval pursuant to the special condition 16. Additionally, the State should make the final determination whether the changes are substantial. The permit should require the permittee to identify all changes to the nutrient management plan, including but not limited to substantial changes, however, the state should review and concur with any determination on whether a change is substantial.

The 2nd sentence of Special Condition 9 (a) (ix) (H) has been revised to the following:

“permittee shall complete an annual review of the nutrient management practices to be implemented and when there is a change in the nutrient management practices submit an update of the Nutrient Management Plan. The permittee shall identify all changes, including substantial changes pursuant to Special Condition 16. The revised Nutrient Management Plan shall be submitted on an annual basis. If no changes were made in the previous year the permittee must identify such in the report; and”

The title of Special Condition 16 has been revised, which is now "Substantial Changes to the Nutrient Management Plan". "Substantial" has been added to the 1st sentence of Special Condition 16.

20. Special Condition 17: The permit should include a definition of "animal confinement area" as found at 35 Ill. Adm. Code 501.223.

Definition of "animal confinement area" has been added to Special Condition 17 consistent with 35 Ill. Adm. Code 501.223.

21. Special Condition 17: The permit should include a definition of "multi-year phosphorus application" as found at 40 CFR 412.4(b)(3).

Definition of "multi-year phosphorus application" has been added to Special Condition 17 as follows:

"Multi-year Phosphorus Application means phosphorus applied to a field in excess of the crop needs for that year. In multi-year phosphorus application, phosphorus-based application rates must maintain or lower the soil test phosphorus during the nutrient management plan period when available soil phosphorus is greater than 50 pounds per acre (Bray P1 or Mehlich 3). In multi-year phosphorus application the soil shall contain less than 300 lbs/acre of available soil phosphorus. "

35 IAC 502.615 adopted the requirements to conduct a field assessment and control nutrient transport in accordance with 40 CFR 412.4. The Illinois Pollution Control Board regulations do consider the multi-year phosphorus application at 35 Ill. Adm. Code 502.625(a) and 502.510(b) by imposing restrictions on soil phosphorus application rate such as 300 lbs/acre and 400 lbs/acre soil phosphorus caps and require use of applied phosphorus in the crop during the plan period when available soil phosphorus is greater than 50 lbs/acre (Bray P1 or Mehlich 3). Requirements to control nutrient transport are specified by Special Condition 3.q for the nitrogen based application rate include the following: the application rate not exceeding the agronomic nitrogen rate; available soil phosphorus equal or less than 300 pounds per acre; soil loss calculated by RUSLE2 less than erosion factor T; additional setbacks; and injection or incorporation of livestock waste. If the requirements for nitrogen based rates cannot be met, the phosphorus based rates requirements apply. Especially, as stated in the definition and in 35 Ill. Adm. Code 502.615, if available soil phosphorus is between 50 and 300 pounds per acre, the multi-year phosphorus application rate shall maintain or lower the soil test phosphorus during the NMP period and available soil phosphorus must be 300 lbs/acre or less (Bray P1 or Mehlich 3). The CAFO NPDES permit contains the above requirements to control phosphorus runoff from the land application area.

22. The permit should include a statement that all terms not specifically defined in the permit are defined as set forth in 35 Ill. Adm. Code Part 501.

Standard Condition 27 of Attachment H provides a broader statement that the permittee shall comply with, in addition to the requirements of the permit, all applicable provisions of 35 IAC Subtitle C, D, E and all applicable orders of the Board or any court with jurisdiction.

23. Is Attachment H the only attachment? The title page refers to “attachments”.

On the title page, “attachments” has been changed to “attachment(s)”.

24. EPA and Illinois EPA have been working on template language for NPDES permits. EPA encourages the State to include any agreed upon language from this template language that is applicable to the General Permit for CAFOs in the next draft. Attachment H is the most likely section of the General Permit for CAFOs that may require incorporation of the template language.

Illinois EPA used the most-recent approved template language in Attachment H that was attached to the draft NPDES permit sent to USEPA Region 5, and plans to use it in the CAFO permit.